

2SSB 6267 - S AMD 159

By Senators Rockefeller, Honeyford

ADOPTED 02/16/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** Water is an essential element for economic
4 prosperity and it generates new, family-wage jobs and state revenues.
5 It is the intent of the legislature to provide both the water right
6 applicants and the department of ecology with the necessary tools to
7 expedite the processing of water right applications depending on the
8 needs of the project and agency workload.

9 NEW SECTION. **Sec. 2.** Sufficient resources to support the
10 department of ecology's water resource program are essential for
11 effective and sustainable water management that provides certainty to
12 processed applications. The department of ecology shall review current
13 water resource functions and report to the legislature and the governor
14 by September 1, 2010, on improvements to make the program more self-
15 sustaining and efficient.

16 **Sec. 3.** RCW 90.03.265 and 2003 c 70 s 6 are each amended to read
17 as follows:

18 (1)(a) Any applicant for a new withdrawal or a change, transfer, or
19 amendment of a water right pending before the department((~~τ~~)) may
20 initiate a cost-reimbursement agreement with the department to provide
21 expedited review of the application. A cost-reimbursement agreement
22 may ((~~only~~)) be initiated under this section if the applicant agrees to
23 pay for, or as part of a cooperative effort agrees to pay for, the cost
24 of processing his or her application and all other applications from
25 the same source of supply which must be acted upon before the
26 applicant's request because they were filed prior to the date of when
27 the applicant filed.

1 (b) The requirement to pay for the cost of other applications under
2 (a) of this subsection does not apply to an application for a new
3 appropriation that would not diminish the water available to earlier
4 pending applicants for new appropriations from the same source of
5 supply.

6 (c) The requirement to pay for the cost of processing other
7 applications under (a) of this subsection does not apply to an
8 application for a change, transfer, or other amendment that would not
9 diminish the water available to earlier pending applicants for changes
10 or transfers from the same source of supply.

11 (d) In determining whether an application would not diminish the
12 water available to earlier pending applicants, the department shall
13 consider any water impoundment or other water resource management
14 mitigation technique proposed by the applicant under RCW 90.03.255 or
15 90.44.055.

16 (e) The department may enter into cost-reimbursement agreements
17 provided resources are available and shall use the process established
18 under RCW 43.21A.690 for entering into cost-reimbursement agreements.
19 The department's share of work related to a cost-reimbursement
20 application, such as final certificate approval, must be prioritized
21 within the framework of other water right processing needs and as
22 determined by agency rule.

23 (f) Each individual applicant is responsible for his or her own
24 appeal costs that may result from a water right decision made by the
25 department. In the event that the department's approval of an
26 application is appealed under chapter 43.21B RCW by a third party, the
27 applicant for the water right in question must reimburse the department
28 for the cost of defending the decision before the pollution control
29 hearings board unless otherwise agreed to by the applicant and the
30 department. If an applicant appeals either an approval or a denial by
31 the department, the applicant is responsible only for its own appeal
32 costs.

33 (2) In pursuing a cost-reimbursement project, the department must
34 determine the source of water proposed to be diverted or withdrawn
35 from, including the boundaries of the area that delimits the source.
36 The department must determine if any other water right permit
37 applications are pending from the same source. A water source may
38 include surface water only, groundwater only, or surface and

1 groundwater together if the department finds they are hydraulically
2 connected. The department shall consider technical information
3 submitted by the applicant in making its determinations under this
4 subsection. The department may recover from a cost-reimbursement
5 applicant its own costs in making the same source determination under
6 this subsection.

7 (3) Upon request of the applicant seeking cost-reimbursement
8 processing, the department may elect to initiate a coordinated cost-
9 reimbursement process. To initiate this process, the department must
10 notify in writing all persons who have pending applications on file for
11 a new appropriation, change, transfer, or amendment of a water right
12 from that water source. A water source may include surface water only,
13 groundwater only, or surface and groundwater together if the department
14 determines that they are hydraulically connected. The notice must be
15 made by way of mail and by publication in a newspaper of general
16 circulation in the area where affected properties are located. The
17 notice must:

18 (a) Inform those applicants that cost-reimbursement processing of
19 applications within the described water source is being initiated;

20 (b) Provide to individual applicants the criteria under which the
21 applications will be examined and determined;

22 (c) Provide to individual applicants the estimated cost for having
23 an application processed;

24 (d) Provide an estimate of how long the cost-reimbursement process
25 will take before an application is approved or denied; and

26 (e) Provide at least sixty days for the applicants to respond in
27 writing regarding the applicant's decision to participate in the cost-
28 reimbursement process.

29 (4) The applicant initiating cost-reimbursement request must pay
30 for the cost of the determination under subsections (2) and (3) of this
31 section and other costs necessary for the initial phase of cost-
32 reimbursement processing. The cost for each applicant for conducting
33 processing under a coordinated cost-reimbursement agreement must be
34 based on the proportionate quantity of water requested by each
35 applicant.

36 (5) For any cost-reimbursement process under this section, the
37 applicant may select the consultant from the department's prequalified
38 consultant's list or may be assigned a prequalified consultant by the

1 department. The applicant may also use its own consultant at the
2 discretion of the department if the consultant meets the requirements
3 in subsection (6) of this section.

4 (6)(a) If the applicant proposes to use its own consultant for one
5 or more of the work products or reports associated with the work
6 generally performed under a cost-reimbursement agreement, and the
7 department agrees to such use, all investigations, work products,
8 technical reports and analysis, findings, and documentation undertaken
9 by the consultant relating to the application, including preparation of
10 a draft report of examination, is subject to the review, comment,
11 modification, refusal, or approval of the department before being used
12 in the department's decision-making process. At any point during the
13 cost-reimbursement process, the department may request or accept
14 technical information, data, and analysis from the applicant or the
15 applicant's consultant to support the cost-reimbursement process or the
16 department's decision on the application.

17 (b) The department is authorized to adopt rules or guidance
18 providing: (i) Minimum qualifications and standards for the submission
19 of such technical information; and (ii) technical information,
20 scientific analysis, work product documentation, and report
21 presentation standards that an applicant's consultant must meet.

22 (7) The department must provide notice to potential consultants of
23 the opportunity to be considered for inclusion on the list of cost-
24 reimbursement consultants to whom work assignments will be made. The
25 department must competitively select an appropriate number of
26 consultants who are qualified by training and experience to investigate
27 and make recommendations on the disposition of water right
28 applications. The consultant list must be renewed at least every six
29 years, though the department may add qualified cost-reimbursement
30 consultants to the list at any time. The department must enter a
31 master contract with each consultant selected and thereafter make work
32 assignments based on availability and qualifications.

33 (8) The department may remove any consultant from the consultant
34 list for poor performance, malfeasance, or excessive complaints from
35 cost-reimbursement participants. The department may interview any
36 cost-reimbursement consultant to determine whether the person is
37 qualified for this work, and must spot-check the work of consultants to
38 ensure that the public is being competently served.

1 (9) When assigned or selected for an application or set of
2 applications to investigate, the consultant must document its findings
3 and recommended disposition in the form of written draft reports of
4 examination. Within two weeks of the department receiving the draft
5 reports of examination, an applicant may provide comments to the
6 department on the contents of the report. The department may modify
7 the reports of examination submitted by the consultant. The
8 department's decision on a permit application is final unless it is
9 appealed to the pollution control hearings board under chapter 43.21B
10 RCW.

11 (10) The department must provide the applicant the opportunity to
12 review and comment on the consultant's findings, technical reports, and
13 preliminary draft reports of examination prior to the completion of
14 final documents by the consultant. The department must consider such
15 comments by the applicant prior to the department's issuance of a draft
16 report of examination.

17 (11) If an applicant elects not to participate in a cost-
18 reimbursement process, the application remains on file with the
19 department, retains its priority date, and may be processed in the
20 future under regular processing, expedited processing, or through cost-
21 reimbursement.

22 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
23 to read as follows:

24 The water rights processing account is created in the state
25 treasury. All receipts from the fees collected under sections 5 and 12
26 of this act must be deposited into the account. Money in the account
27 may be spent only after appropriation. Expenditures from the account
28 may only be used to support the processing of water right applications
29 for a new appropriation, change, transfer, or amendment of a water
30 right or for the examination, certification, and renewal of
31 certification of water right examiners as provided in this chapter and
32 chapters 90.42 and 90.44 RCW.

33 NEW SECTION. Sec. 5. A new section is added to chapter 90.03 RCW
34 to read as follows:

35 (1) The department may expedite processing of applications within
36 the same source of water on its own volition when there is interest

1 from a sufficient number of applicants or upon receipt of written
2 requests from at least ten percent of the applicants within the same
3 source of water.

4 (2) If the conditions of subsection (1) of this section have been
5 met and the department determines that the public interest is best
6 served by expediting applications within a water source, the department
7 must notify in writing all persons who have pending applications on
8 file for a new appropriation, change, transfer, or amendment of a water
9 right from that water source. A water source may include surface water
10 only, groundwater only, or surface and groundwater together if the
11 department determines that they are hydraulically connected. The
12 notice must be made by way of mail and by publication in a newspaper of
13 general circulation in the area where affected properties are located.
14 The notice must:

15 (a) Inform those applicants that expedited processing of
16 applications with the described water source is being initiated;

17 (b) Provide to individual applicants the criteria under which the
18 applications will be examined and determined;

19 (c) Provide to individual applicants the estimated cost for having
20 an application processed on an expedited basis;

21 (d) Provide an estimate of how long the expedited process will take
22 before an application is approved or denied; and

23 (e) Provide at least sixty days for the applicants to respond in
24 writing regarding the applicant's decision to participate in the
25 expedited processing of their applications.

26 (3) In addition to the application fees provided in RCW 90.03.470,
27 the department must recover the full cost of processing all the
28 applications from applicants who elect to participate within the water
29 source through expedited processing fees. The department must
30 calculate an expedited processing fee based primarily on the
31 proportionate quantity of water requested by each applicant and may
32 adjust the fee if it appears that the application will require a
33 disproportionately greater amount of time and effort to process due to
34 its complexity. Any application fees that were paid by the applicant
35 under RCW 90.03.470 must be credited against the applicant's share of
36 the cost of processing applications under the provisions of this
37 section.

1 (4) The expedited processing fee must be collected by the
2 department prior to the expedited processing of an application. An
3 applicant who has stated in writing that he or she wants his or her
4 application processed using the expedited procedures in this section
5 must transmit the processing fee within sixty days of the written
6 request. Failure to do so will result in the applicant not being
7 included in expedited processing for that water source.

8 (5) If an applicant elects not to participate in expedited
9 processing, the application remains on file with the department, the
10 applicant retains his or her priority date, and the application may be
11 processed in the future through regular processing, expedited
12 processing, coordinated cost-reimbursement processing, or cost-
13 reimbursement. Such an application may not be processed through
14 expedited processing within twelve months after the department's
15 issuance of decisions on participating applications at the conclusion
16 of expedited processing unless the applicant agrees to pay the full
17 proportionate share that would otherwise have been paid during such
18 processing. Any proceeds collected from an applicant under this
19 delayed entry into expedited processing may be used to reimburse the
20 other applicants who participated in the previous expedited processing
21 of applications.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
23 to read as follows:

24 The department must provide electronic notice and opportunity for
25 comment to affected federally recognized tribal governments
26 concurrently when providing notice to applicants under RCW 90.03.265
27 and sections 5 and 12 of this act.

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.03 RCW
29 to read as follows:

30 (1) The department shall establish and maintain a list of certified
31 water right examiners. Certified water right examiners on the list are
32 eligible to perform final proof examinations of permitted water uses
33 leading to the issuance of a water right certificate under RCW
34 90.03.330. The list must be updated annually and must be made
35 available to the public through written and electronic media.

1 (2) In order to qualify, an individual must be registered in
2 Washington as a professional engineer, professional land surveyor, or
3 registered hydrogeologist, or an individual must demonstrate at least
4 five years of applicable experience to the department, or be a board
5 member of a water conservancy board. Qualified individuals must also
6 pass a written examination prior to being certified by the department.
7 Such an examination must be administered by either the department or an
8 entity formally approved by the department. Each certified water right
9 examiner must demonstrate knowledge and competency regarding:

- 10 (a) Water law in the state of Washington;
- 11 (b) Measurement of the flow of water through open channels and
12 enclosed pipes;
- 13 (c) Water use and water level reporting;
- 14 (d) Estimation of the capacity of reservoirs and ponds;
- 15 (e) Irrigation crop water requirements;
- 16 (f) Aerial photo interpretation;
- 17 (g) Legal descriptions of land parcels;
- 18 (h) Location of land and water infrastructure through the use of
19 maps and global positioning;
- 20 (i) Proper construction and sealing of well bores; and
- 21 (j) Other topics related to the preparation and certification of
22 water rights in Washington state.

23 (3) Except as provided in subsection (9) of this section, upon
24 completion of a water appropriation and putting water to beneficial
25 use, in order to receive a final water right certificate, the permit
26 holder must secure the services of a certified water right examiner who
27 has been tested and certified by the department. The examiner shall
28 carry out a final examination of the project to verify its completion
29 and to determine and document for the permit holder and the department
30 the amount of water that has been appropriated for beneficial use, the
31 location of diversion or withdrawal and conveyance facilities, and the
32 actual place of use. The examiner shall take measurements or make
33 estimates of the maximum diversion or withdrawal, the capacity of water
34 storage facilities, the acreage irrigated, the type and number of
35 residences served, the type and number of stock watered, and other
36 information relevant to making a final determination of the amount of
37 water beneficially used. The examiner shall make photographs of the
38 facilities to document the use or uses of water and the photographs

1 must be submitted with the examiner's report to the department. The
2 department shall specify the format and required content of the reports
3 and may provide a form for that purpose.

4 (4) The department may suspend or revoke a certification based on
5 poor performance, malfeasance, failure to acquire continuing education
6 credits, or excessive complaints from the examiner's customers. The
7 department may require the retesting of an examiner. The department
8 may interview any examiner to determine whether the person is qualified
9 for this work. The department shall spot-check the work of examiners
10 to ensure that the public is being competently served. Any person
11 aggrieved by an order of the department including the granting, denial,
12 revocation, or suspension of a certificate issued by the department
13 under this chapter may appeal pursuant to chapter 43.21B RCW.

14 (5) The decision regarding whether to issue a final water right
15 certificate is solely the responsibility and function of the
16 department.

17 (6) The department shall make its final decision under RCW
18 90.03.330 within sixty days of the date of receipt of the proof of
19 examination from the certified water right examiner, unless otherwise
20 requested by the applicant.

21 (7) Each certified water right examiner must complete eight hours
22 annually of qualifying continuing education in the water resources
23 field. The department shall determine and specify the qualifying
24 continuing education and shall inform examiners of the opportunities.
25 The department shall track whether examiners are current in their
26 continuing education and may suspend the certification of an examiner
27 who has not complied with the continuing education requirement.

28 (8) Each certified water right examiner must be bonded for at least
29 fifty thousand dollars.

30 (9) The department may waive the requirement to secure the services
31 of a certified water right examiner in situations in which the
32 department deems it unnecessary for purposes of issuing a certificate
33 of water right.

34 (10) The department shall establish and collect fees for the
35 examination, certification, and renewal of certification of water right
36 examiners. Revenue collected from these fees must be deposited into
37 the water rights processing account created in section 4 of this act.

1 Pursuant to RCW 43.135.055, the department is authorized to set fees
2 for examination, certification, and renewal of certification for water
3 right examiners.

4 (11) The department may adopt rules appropriate to carry out the
5 purposes of this section.

6 **Sec. 8.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
7 as follows:

8 (1)(a) Any person or entity, or successor to such person or entity,
9 having a statement of claim on file with the water rights claims
10 registry (~~(on April 20, 1987,)~~) may submit to the department of ecology
11 for filing(~~(7)~~) an amendment to such a statement of claim if the
12 submitted amendment is based on:

13 ~~((1))~~ (i) An error in estimation of the quantity of the
14 applicant's water claim prescribed in RCW 90.14.051 if the applicant
15 provides reasons for the failure to claim such right in the original
16 claim;

17 ~~((2))~~ (ii) A change in circumstances not foreseeable at the time
18 the original claim was filed, if such change in circumstances relates
19 only to the manner of transportation or diversion of the water and not
20 to the use or quantity of such water; or

21 ~~((3))~~ (iii) The amendment is ministerial in nature.

22 (b) The department shall accept any such submission and file the
23 same in the registry unless the department by written determination
24 concludes that the requirements of (a)(i), (ii), or (iii) of this
25 subsection (~~((1), (2), or (3) of this section)~~) have not been
26 satisfied.

27 (2) In addition to subsection (1) of this section, a surface water
28 right claim may be changed or transferred in the same manner as a
29 permit or certificate under RCW 90.03.380, and a water right claim for
30 groundwater may be changed or transferred as provided under RCW
31 90.03.380 and 90.44.100.

32 (3) Any person aggrieved by a determination of the department may
33 obtain a review thereof by filing a petition for review with the
34 pollution control hearings board within thirty days of the date of the
35 determination by the department. The provisions of RCW 90.14.081 shall
36 apply to any amendment filed or approved under this section.

1 **Sec. 9.** RCW 90.44.100 and 2009 c 183 s 16 are each amended to read
2 as follows:

3 (1) After an application to, and upon the issuance by the
4 department of an amendment to the appropriate permit or certificate of
5 groundwater right, the holder of a valid right to withdraw public
6 groundwaters may, without losing the holder's priority of right,
7 construct wells or other means of withdrawal at a new location in
8 substitution for or in addition to those at the original location, or
9 the holder may change the manner or the place of use of the water.

10 (2) An amendment to construct replacement or a new additional well
11 or wells at a location outside of the location of the original well or
12 wells or to change the manner or place of use of the water shall be
13 issued only after publication of notice of the application and findings
14 as prescribed in the case of an original application. Such amendment
15 shall be issued by the department only on the conditions that: (a) The
16 additional or replacement well or wells shall tap the same body of
17 public groundwater as the original well or wells; (b) where a
18 replacement well or wells is approved, the use of the original well or
19 wells shall be discontinued and the original well or wells shall be
20 properly decommissioned as required under chapter 18.104 RCW; (c) where
21 an additional well or wells is constructed, the original well or wells
22 may continue to be used, but the combined total withdrawal from the
23 original and additional well or wells shall not enlarge the right
24 conveyed by the original permit or certificate; and (d) other existing
25 rights shall not be impaired. The department may specify an approved
26 manner of construction and shall require a showing of compliance with
27 the terms of the amendment, as provided in RCW 90.44.080 in the case of
28 an original permit.

29 (3) The construction of a replacement or new additional well or
30 wells at the location of the original well or wells shall be allowed
31 without application to the department for an amendment. However, the
32 following apply to such a replacement or new additional well: (a) The
33 well shall tap the same body of public groundwater as the original well
34 or wells; (b) if a replacement well is constructed, the use of the
35 original well or wells shall be discontinued and the original well or
36 wells shall be properly decommissioned as required under chapter 18.104
37 RCW; (c) if a new additional well is constructed, the original well or
38 wells may continue to be used, but the combined total withdrawal from

1 the original and additional well or wells shall not enlarge the right
2 conveyed by the original water use permit or certificate; (d) the
3 construction and use of the well shall not interfere with or impair
4 water rights with an earlier date of priority than the water right or
5 rights for the original well or wells; (e) the replacement or
6 additional well shall be located no closer than the original well to a
7 well it might interfere with; (f) the department may specify an
8 approved manner of construction of the well; and (g) the department
9 shall require a showing of compliance with the conditions of this
10 subsection (3).

11 (4) As used in this section, the "location of the original well or
12 wells" of a water right permit or certificate is the area described as
13 the point of withdrawal in the original public notice published for the
14 application for the water right for the well. The location of the
15 original well or wells of a water right claim filed under chapter 90.14
16 RCW is the area located within a one-quarter mile radius of the current
17 well or wells.

18 (5) The development and use of a small irrigation impoundment, as
19 defined in RCW 90.03.370(8), does not constitute a change or amendment
20 for the purposes of this section. The exemption expressly provided by
21 this subsection shall not be construed as requiring an amendment of any
22 existing water right to enable the holder of the right to store water
23 governed by the right.

24 (6) This section does not apply to a water right involved in an
25 approved local water plan created under RCW 90.92.090 or a banked water
26 right under RCW 90.92.070.

27 **Sec. 10.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
28 as follows:

29 (1) After an application to, and upon the issuance by the
30 department of an amendment to the appropriate permit or certificate of
31 groundwater right, the holder of a valid right to withdraw public
32 groundwaters may, without losing the holder's priority of right,
33 construct wells or other means of withdrawal at a new location in
34 substitution for or in addition to those at the original location, or
35 the holder may change the manner or the place of use of the water.

36 (2) An amendment to construct replacement or a new additional well
37 or wells at a location outside of the location of the original well or

1 wells or to change the manner or place of use of the water shall be
2 issued only after publication of notice of the application and findings
3 as prescribed in the case of an original application. Such amendment
4 shall be issued by the department only on the conditions that: (a) The
5 additional or replacement well or wells shall tap the same body of
6 public groundwater as the original well or wells; (b) where a
7 replacement well or wells is approved, the use of the original well or
8 wells shall be discontinued and the original well or wells shall be
9 properly decommissioned as required under chapter 18.104 RCW; (c) where
10 an additional well or wells is constructed, the original well or wells
11 may continue to be used, but the combined total withdrawal from the
12 original and additional well or wells shall not enlarge the right
13 conveyed by the original permit or certificate; and (d) other existing
14 rights shall not be impaired. The department may specify an approved
15 manner of construction and shall require a showing of compliance with
16 the terms of the amendment, as provided in RCW 90.44.080 in the case of
17 an original permit.

18 (3) The construction of a replacement or new additional well or
19 wells at the location of the original well or wells shall be allowed
20 without application to the department for an amendment. However, the
21 following apply to such a replacement or new additional well: (a) The
22 well shall tap the same body of public groundwater as the original well
23 or wells; (b) if a replacement well is constructed, the use of the
24 original well or wells shall be discontinued and the original well or
25 wells shall be properly decommissioned as required under chapter 18.104
26 RCW; (c) if a new additional well is constructed, the original well or
27 wells may continue to be used, but the combined total withdrawal from
28 the original and additional well or wells shall not enlarge the right
29 conveyed by the original water use permit or certificate; (d) the
30 construction and use of the well shall not interfere with or impair
31 water rights with an earlier date of priority than the water right or
32 rights for the original well or wells; (e) the replacement or
33 additional well shall be located no closer than the original well to a
34 well it might interfere with; (f) the department may specify an
35 approved manner of construction of the well; and (g) the department
36 shall require a showing of compliance with the conditions of this
37 subsection (3).

1 (4) As used in this section, the "location of the original well or
2 wells" of a water right permit or certificate is the area described as
3 the point of withdrawal in the original public notice published for the
4 application for the water right for the well. The location of the
5 original well or wells of a water right claim filed under chapter 90.14
6 RCW is the area located within a one-quarter mile radius of the current
7 well or wells.

8 (5) The development and use of a small irrigation impoundment, as
9 defined in RCW 90.03.370(8), does not constitute a change or amendment
10 for the purposes of this section. The exemption expressly provided by
11 this subsection shall not be construed as requiring an amendment of any
12 existing water right to enable the holder of the right to store water
13 governed by the right.

14 NEW SECTION. Sec. 11. A new section is added to chapter 90.44 RCW
15 to read as follows:

16 Applications to appropriate groundwater under a cost-reimbursement
17 agreement must be processed in accordance with RCW 90.03.265 when an
18 applicant requests the assignment of a cost-reimbursement consultant as
19 provided in RCW 43.21A.690.

20 NEW SECTION. Sec. 12. A new section is added to chapter 90.44 RCW
21 to read as follows:

22 (1) The department may expedite processing of applications within
23 the same source of water on its own volition when there is interest
24 from a sufficient number of applicants or upon receipt of written
25 requests from at least ten percent of the applicants within the same
26 source of water.

27 (2) If the conditions of subsection (1) of this section have been
28 met and the department determines that the public interest is best
29 served by expediting applications within a water source, the department
30 must notify in writing all persons who have pending applications on
31 file for a new appropriation, change, transfer, or amendment of a water
32 right from that water source. A water source may include surface water
33 only, groundwater only, or surface and groundwater together if the
34 department determines that they are hydraulically connected. The
35 notice must be made by way of mail and by publication in a newspaper of

1 general circulation in the area where affected properties are located.

2 The notice must:

3 (a) Inform those applicants that expedited processing of
4 applications with the described water source is being initiated;

5 (b) Provide to individual applicants the criteria under which the
6 applications will be examined and determined;

7 (c) Provide to individual applicants the estimated cost for having
8 an application processed on an expedited basis;

9 (d) Provide an estimate of how long the expedited process will take
10 before an application is approved or denied; and

11 (e) Provide at least sixty days for the applicants to respond in
12 writing regarding the applicant's decision to participate in expedited
13 processing of their applications.

14 (3) In addition to the application fees provided in RCW 90.03.470,
15 the department must recover the full cost of processing all the
16 applications from applicants who elect to participate within the water
17 source through expedited processing fees. The department must
18 calculate an expedited processing fee based primarily on the
19 proportionate quantity of water requested by each applicant and may
20 adjust the fee if it appears that the application will require a
21 disproportionately greater amount of time and effort to process due to
22 its complexity. Any application fees that were paid by the applicant
23 under RCW 90.03.470 must be credited against the applicant's share of
24 the cost of processing applications under the provisions of this
25 section.

26 (4) The expedited processing fee must be collected by the
27 department prior to the expedited processing of an application. An
28 applicant who has stated in writing that he or she wants his or her
29 application processed using the expedited procedures in this section
30 must transmit the processing fee within sixty days of the written
31 request. Failure to do so will result in the applicant not being
32 included in expedited processing for that water source.

33 (5) If an applicant elects not to participate in expedited
34 processing, the application remains on file with the department, the
35 applicant retains his or her priority date, and the application may be
36 processed in the future through regular processing, expedited
37 processing, coordinated cost-reimbursement processing, or cost-
38 reimbursement. Such an application may not be processed through

1 expedited processing within twelve months after the department's
2 issuance of decisions on participating applications at the conclusion
3 of expedited processing unless the applicant agrees to pay the full
4 proportionate share that would otherwise have been paid during such
5 processing. Any proceeds collected from an applicant under this
6 delayed entry into expedited processing may be used to reimburse the
7 other applicants who participated in the previous expedited processing
8 of applications.

9 NEW SECTION. **Sec. 13.** Section 9 of this act expires June 30,
10 2019.

11 NEW SECTION. **Sec. 14.** Section 10 of this act takes effect June
12 30, 2019.

13 NEW SECTION. **Sec. 15.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected."

2SSB 6267 - S AMD

By Senators Rockefeller, Honeyford

ADOPTED 02/16/2010

17 On page 1, line 1 of the title, after "improvements;" strike the
18 remainder of the title and insert "amending RCW 90.03.265, 90.14.065,
19 90.44.100, and 90.44.100; adding new sections to chapter 90.03 RCW;
20 adding new sections to chapter 90.44 RCW; creating new sections;
21 providing an effective date; and providing an expiration date."

EFFECT: Requires the department of ecology to review current

water resource functions and report any improvements to make the program more self-sustaining and efficient to the legislature and the governor by September 1, 2010.

Provides for a coordinated cost-reimbursement process. Establishes that each applicant is responsible for his or her appeal costs. In the event that the department of ecology's approval of an application is appealed by a third party, the applicant must reimburse the department of ecology for the cost of defending the decision before the pollution control hearings board unless otherwise agreed to by the applicant and the department of ecology. Allows an applicant in a cost-reimbursement process to choose his or her consultant at the discretion of the department of ecology.

Allows an individual to demonstrate at least five years of applicable experience or be a conservancy board member in order to be eligible to become a certified water right examiner.

Allows the department of ecology to expedite processing of applications within the same surface water or groundwater source on its own volition when there is interest from a sufficient number of applicants or upon receipt of written requests from at least ten percent of the applicants who have pending applications that may be within the same source of water. Requires that the department of ecology provide to applicants eligible for expedited processing the criteria under which the applications will be examined and determined. Provides that fees already paid by the applicant will be credited to the applicant's expedited processing fee. Allows an applicant to remain in line, retain their priority date, and have their application processed at a later date.

Removes the provisions allowing the department of ecology to issue an order requiring an applicant to amend his or her application within one year after the date notification that a water basin is closed is mailed to the applicant. Removes the provisions in which applications may be put in project dependent status. Removes the provision allowing applications from a municipal water applicant to be put into municipal pending status. Requires the department of ecology to provide electronic notice to affected federally recognized tribal governments when providing notice to applicants under cost-reimbursement or expedited processing.

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